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Thurston Twigg-Smith
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Land reform stalls

It's important, but it is not the end of one of the most significant cases involving public policy and private rights in Hawaii, and perhaps elsewhere in the nation as well.

That would seem to be the essential point now on yesterday's 2-1 ruling of a three-judge panel of the 9th U.S. Circuit Court of Appeals that Hawaii's Land Reform Act is unconstitutional.

THE END of this case is likely to come only when the U.S. Supreme Court itself either decides on the issues or declines to accept the case, letting the appeals ruling stand.

There are even mixed opinions on what the Supreme Court might do. On one hand, this is a case largely special to Hawaii. But it is considered a vital case in our society.

It is also said that the U.S. Supreme Court has not ruled on this type of case for many years. Thus it might be ready to make a statement with broader implications on the question of conditions for condemnation of private land.

Meanwhile, there is at least the potential for the state to ask the entire 9th Circuit Court, up to 13 judges, to rehear the case. It would be unusual for that to happen.

WHATEVER happens there are likely to be strong feelings both about the meaning in Hawaii and in terms of constitutional rights involved.

The three judges involved yesterday issued three opinions totaling 78 pages. Reactions here ranged from joy at Bishop Estate which brought the suit and among Hawaii groups who support it, to gloom and determination to press on by lessees and others who support land reform.

The majority opinion came down strongly to the effect that the Hawaii act is unconstitutional because it involves the state taking private residential land not for a public purpose but to sell it to people who lease and live on it.

But the 1967 law was enacted because it was felt Hawaii faced a special situation where a few

large landowners controlled more than half of Oahu's private land available for housing, and that the leasehold system created inflated values.

In effect, while private buyers may have been involved, the question at the time seemed to be whether the result of the law served a larger public good where tens of thousands of persons would get to own the land they lived upon.

Involved, of course, are emotions and cultural aspirations about land ownership.

Many Americans have strong feelings of "need" to own the land they live on; many see it as a right. But in the case of Bishop Estate the land involved comes from a Hawaiian princess and the proceeds from its use are used for the education of thousands of Hawaiian children. Estate trustees feel they best serve the Hawaiian economic and cultural interests by keeping the land.

CONSTITUTIONAL considerations dominated in yesterday's ruling. The Hawaii law was found to be patently unconstitutional in the main opinion without going much into how it works in practice. That view may prevail with the Supreme Court.

But two other considerations are also noted by experts:

One is that while the U.S. Supreme Court has firmly held that eminent domain can only be used for a public purpose, it has most often left the definition of that purpose up to state legislatures.

But the other point is that Hawaii's law is said to be strong in its language — "blatantly socialistic" in its purpose of redistributing land, says one legal expert.

In short, Hawaii may be a special place, but how special can you be both in terms of the U.S. Constitution and prevailing attitudes in Mainland federal courts?

How those two considerations will play in Washington, or with a full appeals court in San Francisco if it comes to that, may say more than the 2-1 ruling yesterday.

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